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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,263	06/07/2006	Frank Lehnert	Belimo P1013 US	4664
37138	7590	03/16/2010	EXAMINER	
THADDIUS J. CARVIS 102 NORTH KING STREET LEESBURG, VA 20176			MILLER, SAMANTHA A	
			ART UNIT	PAPER NUMBER
			3749	
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			03/16/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/596,263

**Applicant(s)**

LEHNERT, FRANK

**Examiner**

SAMANTHA A. MILLER

**Art Unit**

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 9-12, 15, 16 and 20-25 is/are rejected.
- 7) ☐ Claim(s) 4, 6-8, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

Receipt of applicant's amendment filed on 11/19/2009 is acknowledged.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 9-12, and 20-24 rejected under 35 U.S.C. 102(b) as being anticipated by HIGHTOWER (5,310,021).

HIGHTOWER teaches:

1. One or more air flaps (21) actuated synchronously and which prevent the air flow in the ventilating pipe (22) in closed position (Fig.1), wherein each of the one or more air flaps is rigidly connected to a drive axle (link of 24) and is rotational about said drive axle, a fastening web (24) with a pivot bearing (middle bearing connecting two links) for the drive axle of the one or more air flap, means (20, 25, 31) for transmitting force and/or torque to the drive axle connected to said one or more air flap(s), wherein gearing means (Fig.3) for transmitting force and/or torque are mount on the fastening web, a fastening web holder (25) fixing web to the inside of the ventilation pipe wherein said fastening web and said means for transmitting force and/or torque are arranged in the ventilating pipe (at 25 and 31), on a longitudinally extending plane of symmetry, a

rotatable connection between said fastening web to the inside of the venting pipe (24 around 25) wherein rotatable connection is at a distance from said drive axle (link of 24 connecting to 21) and parallel to said drive axis (two links of 24 are side by side or parallel), such that the same fastening web fitted with various air flaps can be used for cross-sectionally differently dimensioned ventilating pipes (Fig.2).

2. The fastening web is fixed by the fastening web holder (25) inside the ventilation pipe at an angle of 15 to 90° (angle shown in Fig.2) wherein said angle of the fastening web is defined relative to a longitudinal axis of the ventilating pipe or relative to a wall of the ventilation pipe and said angle is dependent on the diameter of the ventilation pipe.(Fig.1).

3. The fastening web is fastened by the fastening web holder so as to be pivotable in said longitudinally extending plane of symmetry (Fig.1).

5. The fastening web is detachably fastened at both ends to the inside of the pipe wall (Fig.2).

9. The fastening web is streamlined, preferably round or prismatic (prismatic) and is provided with rounded edges (at 25) to avoid a significant drop in pressure in the ventilating pipe and to avoid the formation of undesired turbulence.

10. A fastening point (between the two links of 24) is provided, in each case, on the drive axle on either side of the fastening web (Fig.2) for the one or more air flap(s) (21).

11. The drive axles of the one or more air flap(s) are lengthened for centring thereof on either side of the pipe wall (Fig.1-2) and are supported there.

12. The one or more air flaps are blade-shaped (Fig.2) can be folded over parallel to the drive axle (Fig.1).

20. The bearing for the drive axle is arranged at an end of the fastening web at a distance to said rotational connection between said fastening web holder and the fastening web (Fig.2).

21. The fastening web is an elongate bar- shaped stiff element with a cross-sectional shape that is flat (Fig.1-2).

23. A locking means (26, 27) for locking said rotatable connection at a rotational position during operation of the air flaps for fixing the same fastening web inside the ventilating pipe at an angle (Fig.2) fixed relative to a longitudinal axis of the ventilating pipe and depending on the diameter of the ventilating pipe.

Regarding claims 24, refer to the rejection of claims 1-5 and 9-12.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over HIGHTOWER (5,310,021) in view of McCabe (2001/0055947).

HIGHTOWER teaches the invention as discussed above, however HIGHTOWER does not teach a monitor, measuring cells, or two air flaps.

McCabe teaches

15. A monitor (142,150,152) visually displays the flap position.

16. Measuring cells (142,150,152) for measuring the differential pressure, the volume flow and/or a position of the air flap, wherein the measuring cells are arranged on the fastening web (para.0081).

25. a) at least two different air flaps(116) having various dimensions for said cross-sectionally differently dimensioned ventilating pipes (Fig.8) so as to prevent the air flow in the ventilating pipe in a closed position (Fig.7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the air damper of HIGHTOWER in view of the monitor and measuring cells of MCCABE in order to for a user to monitor the damper to make sure it is efficient.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the air damper of HIGHTOWER in view of two air flaps of MCCABE in order to have more precise control of the air flow admitted making the damper more efficient

#### ***Allowable Subject Matter***

Claims 4, 6, 8, 13-14, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 7 is objected to as depending on claim 6.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-16 and 20-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272-9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller  
Examiner  
Art Unit 3749  
2/27/2009  
/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749